

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD T. BALSAVAGE,
Plaintiff,

v.

JOHN E. WETZEL, et al.,
Defendants.

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CIVIL ACTION
NO. 11-5817

ORDER

AND NOW, this 20th day of March, 2013, upon careful and independent consideration of the petition for writ of habeas corpus, the parties' briefs, United States Magistrate Judge Carol Sandra Moore Wells' Report and Recommendation ("R & R"), and Petitioner's objections to the R & R, it is **ORDERED** that:

1. The R & R is **APPROVED** and **ADOPTED IN PART** and **REJECTED IN PART**, *see* ECF No. 12, as follows:

a. The R & R is **APPROVED** and **ADOPTED as it pertains to claim one** of Balsavage's petition, which seeks relief on the ground that the trial court violated Balsavage's rights under the U.S. Constitution by increasing his original sentence after he petitioned for resentencing to exercise his right of allocution;

b. The R & R is **APPROVED** and **ADOPTED as it pertains to claim three** of Balsavage's petition, which seeks relief on the ground that the trial court violated Balsavage's Fifth Amendment right against self-incrimination when the judge aggressively cross-examined Balsavage prior to imposing a sentence;

c. The R & R is **REJECTED as it pertains to claim two** of Balsavage's petition, which seeks relief on the ground that the increased sentence Balsavage received after his appeal violates the Due Process Clause of the Fourteenth Amendment because it is the product of judicial vindictiveness.

2. The petition for a writ of habeas corpus is **CONDITIONALLY GRANTED**. *See* Memorandum and Order, ECF Nos. 12, 13.

3. There is no basis for the issuance of a certificate of appealability to Petitioner on claims one and three. A certificate of appealability is not required for Respondents because they may appeal as of right.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

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